

PROPOSED CHANGES TO SECTION VII – SPECIAL REGULATIONS – 1-1 & 2.1

~~Strikethrough~~ indicates language proposed for deletion

Underline indicates language proposed for inclusion

1-12. Affordable ~~Apartment Incidental to a Single Family Dwelling~~ Housing

Intent:

~~The intent of this section is to provide some affordable housing to meet the needs of Chatham's residents and workers. This section sets forth standards and conditions for Affordable Apartments Incidental to a Single Family Dwelling. The standards are intended to be consistent with those recommended by the Cape Cod Commission for use by Towns. It is also intended that "affordable" units required and approved under this Bylaw Remain affordable.~~

Heading changed proposed to more accurately reflect the restructured Section 2 to cover Affordable Housing

"Preamble" converted to "Purpose and Intent" paragraph to better articulate the broader planning goals of the restructured Section 2. A supporting document outlining the format changes in the overall context of Section VII has been developed to facilitate understanding of the restructuring.

Purpose and Intent

The purpose and Intent of this Section is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with the Comprehensive Plan, MGL. c. 40B sec. 20-23 and ongoing programs within the Town to promote a reasonable percentage of housing that is affordable. It is intended that the affordable housing units that result from this Section be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Massachusetts Department of Housing and Community Development (DHCD) and that said units count toward the Town's requirements under G. L. c. 40B sec. 20-23 on the Subsidized Housing Inventory (SHI). The overall intent of this Section is to:

- Provide the opportunity to create various types of high-quality dwelling units affordable to low or moderate income households.
- Promote geographic distribution of affordable housing units throughout the Town and avoid over-concentration.
- Approve units consistent with neighborhood and overall community character
- Assist the Town in creating units eligible for the Chapter 40B **Subsidized Housing Inventory** (SHI).
- Maintain a stable economy by preventing out-migration of residents who provide essential services.

Proposed bullets provide more specific expression of the overall intent of the Affordable Housing Section in the Protective Bylaw.

2-1. Definitions:

Affordable, used in reference to dwelling units means intended for rental or sale to low or moderate income people and in conformance with the requirements of this

BylawSection in regard to price and income level of tenant(s).

Affordable Apartment Incidental to a Single Family Dwelling means a dwelling unit subordinate to a one-family dwelling approved on the condition that the requirements of this **BylawSection** are met for affordable price and income eligible tenants.

Affordable Price, used in reference to a dwelling unit, means a monthly rent or mortgage payment which does not exceed 30% of the gross monthly income of a household whose income is 70% of the median income for Barnstable County as reported by the United States Department of Housing and Urban Development (HUD).

Area Median Income (AMI) - The estimated median income, adjusted for family size, by county or metropolitan area. The AMI is adjusted annually by HUD.

Chatham Housing Authority – The local Housing Authority organized pursuant to Massachusetts General Laws, Chapter 121B, Section 3.

Deed Restriction – An executed restriction in a form acceptable to the SPGA, recorded with the Barnstable County Registry of Deeds.

Department of Housing and Community Development (DHCD) – The Massachusetts agency that oversees State funded programs and other funding incentives to promote affordable housing. DHCD keeps the individual communities affordable housing units inventory, and determines or “certifies” what “counts” as affordable housing. (see **Subsidized Housing Inventory**)

Additional affordable housing specific definitions added to improve understanding of entities and terms involved in the creation of affordable housing.

Housing and Urban Development (HUD) - The Federal agency responsible for addressing the nation’s housing needs and development of nation’s community, as well as for enforcing of fair housing laws and for helping local communities meet development needs.

Income Eligible means that the household income of a person or family does not exceed 80% of the median income, adjusted for household size, for Barnstable County as reported by the United States Department of Housing and Urban Development (HUD).

Local Action Units (LAU) - Affordable units built pursuant to a local action such as a zoning provision, a condition of a variance or special permit issued by the planning board or zoning board of appeals, a contract provision (e.g., reuse of municipal or school building as housing), or an agreement between the town and a non-profit organization to build or rehabilitate municipal buildings into housing. This component of the LIP gives communities the opportunity to include housing units on the state’s **Subsidized Housing Inventory** that were built without a Comprehensive Permit but which meet LIP criteria.

Local Initiative Program (LIP) A State program under which communities may use local resources and technical assistance from DHCD to develop affordable housing pursuant to 760 CMR 45.00-45.07.

Local Program Administrator (LPA) - Entity responsible for oversight of **affordable** units. This could be a local official, a local housing partnership board member or staff member, the director of an area housing non-profit organization, or another appropriate person meeting DHCD approval.

Subsidized Housing Inventory (SHI) - DHCD's official list of units, by municipality, that counts toward a community's 10% goal.

Twenty Percent - Used in reference to the mandatory provision of affordable dwelling units, shall mean two tenths rounded to the nearest whole number.

2-2. Affordable Rental Units

Dwelling units created for rental purposes required to be **affordable** or approved under this Section with the condition that they are **affordable** shall be subject to the following:

- A. Rental dwelling units required or approved under this Section as **affordable** shall meet the definition of **affordable price** as set forth in this Section. Certification by the **LPA** that the price is an **affordable price** shall be provided to the Zoning Enforcement Officer.
- B. Any dwelling approved under this Section as an affordable rental unit shall be rented subject to a minimum 12-month lease.
- C. For any dwelling unit required or approved as an affordable rental under this Section, certification by the **LPA** that the tenants occupying the affordable unit are **income eligible** and the rent charged them is **affordable** per the definitions in this Section must be submitted to the Zoning Enforcement Officer at the time of the signing of the lease and on an annual basis thereafter. Such certification is also required upon any change in tenants or rent charged. Dates of occupancy shall be stated in the certification.
- D. Owners of **affordable** units created under this Section shall be encouraged to rent the units to Chatham residents, workers, or people with ties to the community.
- E. **Affordable** accessory apartment units shall be subject to **affordable** housing use restrictions that are executed by the homeowner, the Municipality, and **DHCD** and filed by the **LPA** in the registry of deeds/Land Court registry district subject to the following provisions regarding the early termination of such restrictions:

1. Tenant Notice

In all cases, the owner must provide an existing tenant at least 60 days prior written notice that his or her lease will not be renewed.

2. Restrictions that either terminate automatically or are revocable by the owner upon transfer of the property.

If the restriction terminates and is not renewed by the new owner, the municipality must notify **DHCD**. The unit will no longer be deemed a **Local Action Unit** and will be removed from the **Subsidized Housing Inventory** unless the new owner obtains municipal approval to rent the accessory apartment and enters into an affordable housing restriction in the form approved by **DHCD**.

This new Section establishes the requirements for all affordable rental units created under the Bylaw. This structure lends itself to be "linked-to" other sections of the Bylaw that may be revised to add affordable provisions/requirements (e.g., top of shop housing, multi-family development in neighborhood centers etc.)

This section has been added to highlight the revised LIP guidelines, spelling out the parameters of required use restrictions and details of early termination of use restrictions.

Recent changes to the LIP guidelines add flexibility to the required restrictions to get units to count towards the 10% goal, by removing the 15 and 30 year restrictions for rehabilitated units and new units respectively and by clarifying conditions to terminate participation by the homeowner (lower barrier to entry).

3. Restrictions that allow the owner to voluntarily terminate the restriction and cancel a Special Permit at the end of a tenant's lease term.

Voluntary termination may occur only after the owner has rented the accessory apartment to **income eligible** tenants for five (5) years. The municipality must notify **DHCD** that the restriction has been voluntarily terminated, and the unit will no longer be deemed a **Local Action Unit** and will be removed from the **Subsidized Housing Inventory**.

4. Removal of Deed Restriction

In the event that an owner decides not to continue with the program, then the Affordable Housing Restriction recorded as a deed restriction shall be discharged by a recording of an appropriate document executed by an authorized person.

2-3. Affordable Homeownership Units

Dwelling units created for homeownership purposes required to be **affordable** or approved under this Section with the condition that they are **affordable** shall be subject to the following requirements:

- A. Any homeownership dwelling unit required or approved under this Section as affordable shall meet the definition of an **affordable price** as set forth in this Section. Certification by the **LPA** that the price is an **affordable price** shall be provided to the Zoning Enforcement Officer.
- B. At the time of the sale of any homeownership dwelling units approved or required under this Section as **affordable**, certification by the **LPA** shall be provided to the Zoning Enforcement Officer that the purchaser is **income eligible** as defined in this Section.
- C. A deed restriction shall be placed upon the property limiting the resale price in perpetuity. The formula for setting the resale price shall be as follows; at the time of the original purchase, a multiplier shall be determined by dividing the sales price by the area median income (AMI) for Barnstable County as provided by the United States Department of Housing and Urban Development (HUD). At the time of sale of the unit, the multiplier times the AMI at the time of the sale shall be the maximum sale price.
- D. If a unit is offered for sale, the purchaser and the Town shall sign an agreement setting forth the procedure for establishing a resale price to keep the unit affordable upon its sale and granting the Town the right of first refusal should the seller fail to enter into a bona fide purchase and sale agreement with an **income eligible** buyer within ninety (90) days of the date that the unit is originally offered for sale.
- E. In the permitting and certification process, owners of affordable units created under this Section shall be encouraged to sell the units to Chatham residents, workers, or people with ties to the community.

Section 2-3 establishes the requirements for all homeownership units created under the Bylaw. This structure lends itself to be "linked-to" other sections of the Bylaw that may be revised to add affordable provisions/requirements (e.g., conversion of uses, etc.)

2-4. Affordable Apartment Incidental to a Single Family Dwelling

A. Intent and Purpose

Affordable Rental Housing - The intent of this section is to provide opportunities to create **affordable** rental housing to meet the needs of Chatham's residents and workers. This section sets forth standards and conditions for **Affordable Apartments Incidental to a Single Family Dwelling**. The standards are intended to be consistent with those recommended by the Cape Cod Commission for use by Towns. It is also intended that **affordable** units required and approved under this Section Remain **affordable**.

Un-permitted Apartments - As well as allowing the construction of new dwelling units accessory to existing single-family homes to create additional **affordable** housing, this Section also provides an opportunity to bring into compliance currently un-permitted accessory apartments and apartment units in Chatham. This Section recognizes that although un-permitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been lawfully constructed and occupied. It is in the public interest and in concert with its obligations under state law, for the Town of Chatham to offer a means by which un-permitted and illegal dwelling units can achieve lawful status, but only in the manner described in this Section.

Since the adoption of the former Section 1-1 in 2005, no affordable units have been created as a result. This Section has been revised based upon the successful program implemented by the Town of Barnstable for creating affordable accessory apartments.

The proposed approach also includes a mechanism for an "Amnesty Program" as recommended in the Comprehensive Plan, Planned Production Plan and at the 2007 Housing Summit. See Sub-Section C. below.

B. New Affordable Apartment Incidental to a Single Family Dwelling.

1. General:

- a. No more than ~~10~~² Special Permits acted upon in the order received shall be granted for **Affordable Apartments Incidental to a Single Family Dwelling** in any 12-month period.
- b. **Affordable Apartments Incidental to a Single Family Dwelling** are allowed by Special Permit approved by the Zoning Board of Appeals in all districts except Municipal Conservancy (M/C) and Industrial (I) as set forth in this section.
- c. The Zoning Board of Appeals shall solicit comments on the proposal from other Town regulatory agencies which have jurisdiction in the particular case, and prior to acting upon the application, the Zoning Board shall consider any comments received from such agencies.

Proposed format employed to differentiate between potential new and "amnesty" units.

Proposed increase in limit of annual Special Permits from 10 to 12 to correspond with Town's Affordable Housing Planned Production Plan.

2. Conditions:

All **Affordable Apartments Incidental to a Single Family Dwelling** shall be subject to the following conditions:

- a. No **affordable** apartment shall be approved in addition to a **Guest House** on a single family lot.

Conditions from previous version of the bylaw have been retained with minor revisions to reflect proposed program and bylaw format changes.

- b. Either the proposed apartment or the principal dwelling may be proposed to be rented as **affordable**, provided the property owner occupies the unit which is not designated as **affordable**. A change in the designation of which unit is **affordable** shall require an amendment to the Special Permit.
- c. The owner of the property must dwell in either the apartment or in the principal dwelling unit and shall not rent both the apartment and principal dwelling unit at the same time.

d. An owner of a property containing an accessory apartment who is absent for a period of less than two (2) years may rent the owner's unit as well as the second unit during the temporary absence provided: written notice thereof shall be made to the Zoning Enforcement Officer or designee on a form prescribed by him/her and that the owner shall be a resident of the property for at least two year prior to and between such temporary absences.

Added provision to account for the temporary absence of property owner.

d.e. The owner of the property must meet and adhere to the requirements for an **affordable** dwelling unit as set forth in this Section.

e.f. Application may be made for a Special Permit under this section provided the property where the apartment is to be located has a minimum of 20,000 square feet of **buildable upland** area unless specifically waived by the Zoning Board of Appeals.

Provision added to give the ZBA greater flexibility in considering proposals

f.g. **Affordable Apartments Incidental to a Single Family Dwelling** shall meet all applicable State and local requirements for the establishment of dwelling units, including the Board of Health regulations limiting the number of bedrooms, Building Code, Wetlands Protection Regulations and other approvals as necessary.

g.h. Unless specifically waived by the Zoning Board of Appeals, two-at least one (1) parking spaces shall be provided for the **affordable** apartment in addition to the two parking spaces required for the single family dwelling.

h.i. The Special Permit shall lapse in the event that the **affordable** apartment is not used for a period of two years. Upon application by the owner, the Zoning Board of Appeals may reinstate the Special Permit after a public hearing. If the reinstatement is not requested or is denied by the Zoning Board, the Zoning Enforcement Officer may order that the kitchen be removed from the apartment.

i.j. The Zoning Enforcement Officer has the authority to order the kitchen to be removed from the **affordable** apartment upon finding a violation of the conditions of the Special Permit issued under this section and in the event that the owner does not correct the violation in a timely manner, after being given proper notice.

i.k. The **affordable** apartment may be part of the principal dwelling or in a separate building accessory to the single family dwelling.

Noise reduction removed as it is covered under "Review Criteria" below.

i. The site shall provide for privacy, ~~noise reduction~~, and outdoor recreation area for the tenants of the apartment.

3. Review Criteria:

In addition to the ~~review criteria~~conditions for Special Permits set forth in this ~~Bylaw~~Section, the following criteria shall be used in the review of all Special Permits for ***Affordable Apartments Incidental to a Single Family Dwelling***:

- a. Adequacy and suitability of the site for the addition of the apartment, whether or not new construction is proposed, with consideration of the size and shape of the site, access to the site, location of existing and proposed buildings, topography of the site and surrounding area, and existing vegetation.
- b. Impact of the proposal upon the abutters and the neighborhood, including such considerations as the size of the unit proposed, location of the unit on the site, ~~proximity of the unit to the abutters~~, layout of parking provided, and location of the outdoor use area for the unit.

Conditions for Affordable Dwelling Units:

These conditions for affordable dwelling units have been retained and moved to Section 2-2 - Affordable Rental Units.

~~Dwelling units required to be **affordable** or approved under this Bylaw with the condition that they are **affordable** shall be subject to the requirements of this section.~~

- ~~* Any dwelling unit required or approved under this Bylaw as **affordable** shall meet the definition of **affordable price** as set forth in this Bylaw. Certification by the Chatham Housing Authority that the price is an "**affordable price**" shall be provided to the Zoning Enforcement Officer.~~
- ~~* Any dwelling approved under this Bylaw as an affordable rental unit shall be rented subject to a minimum 12-month lease.~~
- ~~* For any dwelling unit required or approved as an affordable rental under this Bylaw, certification by the Chatham Housing Authority that the tenants occupying the affordable unit are **income eligible** and the rent charged them is **affordable** per the definitions in this Bylaw must be submitted to the Zoning Enforcement Officer at the time of the signing of the lease and on an annual basis thereafter. Such certification is also required upon any change in tenants or rent charged. Dates of occupancy shall be stated in the certification.~~
- ~~* Owners of **affordable** units created under this Bylaw shall be encouraged to rent the units to Chatham residents, worker, or people with ties to the community.~~

4. Conditions of Approval:

The Zoning Board may impose conditions upon the approval of a special permit for an **affordable** apartment incidental to a single family dwelling in keeping with the review criteria, and such conditions may include a limit on the number of people who can occupy the affordable unit.

C. Amnesty Program.

Recognizing that the success of this Section depends, in part, on the admission by real property owners that their property may be in violation of the Zoning Ordinances of the Town, the Town hereby establishes the following **Amnesty Program**.

Proposed "Amnesty Program" modeled on that instituted in Barnstable as noted above.

1. Threshold Criteria

The threshold criteria for units being considered as units potentially eligible for the **Amnesty Program** are:

Criteria for units eligible "Amnesty Program" are spelled out in this Section.

- a. Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued Variance, Special Permit or Building Permit, does not qualify as a lawful, nonconforming use or structure; or
- b. Real property containing a dwelling unit or dwelling units and which have been cited by the **Zoning Enforcement Officer** as being in violation of the Protective (Zoning) Bylaw; and
- c. The property owner has the burden of demonstrating to the Building Commissioner that the criteria in either Subsection 1.a. and/or b. above have been satisfied.
- d. If any dwelling unit or units identified herein are occupied during the period of time when amnesty is in effect, said unit must be inspected by the Building Commissioner or designee and found to be in conformance with the State Building Code and State Sanitary Code.

2. Program Qualification

The procedure for qualifying units that meet the threshold criteria for the **Amnesty Program** is as follows:

The conditions for units qualifying for the program are outlined in this Section.

- a. The unit or units must either be a single unit accessory to an owner occupied single-family dwelling or one or more units in a multi-family dwelling where there exists a legal multi-family use but one or more units are currently un-permitted;
- b. The property owner must agree that if s/he receives a Special Permit, the unit or units for which amnesty is sought will be rented to an **income eligible** person or family and shall further agree that rent (including utilities) shall not exceed an **affordable price**.
- c. The property owner must agree, that if s/he receives a Special Permit, that s/he will execute a **deed restriction** in accordance with Section VII. 2-2 for the unit(s) for which amnesty is sought, prepared by the Town of Chatham, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to an **income eligible** person or family.

3. Program Procedure - The procedure for obtaining amnesty is as follows:

- a. No zoning enforcement shall be undertaken against any property owner who demonstrates that s/he meets the **Amnesty Program** threshold criteria under Subsection C.1a. and/or b. and further demonstrates that s/he is proceeding in good faith to comply with the procedures to obtain a Special Permit.

This new Section establishes the program procedures and relationship with zoning enforcement.

- b. Any protection from zoning enforcement under this Section shall terminate when:
1. A written determination by the Building Commissioner is issued under the applicable criteria of this Section cannot be satisfied; or
 2. It is determined that the property owner is not proceeding diligently with his/her Special Permit application; or
 3. The property owner's Special Permit application is denied. A person is deemed "not to be proceeding diligently" if s/he does not receive a Special Permit within 12 months from the date of the admission by real property owners that their property may be in violation of the Zoning Ordinances of the Town, or as such time extended by mutual agreement of the ZBA and the Applicant.

E. Achievement of the 10% Goal

At such time that the Town of Chatham achieves the goal of having ten (10) percent of the Town's year round housing stock considered **affordable** under Chapter 40B as indicated on the **Subsidized Housing Inventory (SHI)** the Zoning Board Appeals may deny projects submitted under this section based upon the presumption that the local need for **affordable** housing has been satisfied.

Upon achieving the Town, County and State affordable housing goal of 10%, this Section provides the ZBA with the ability deny projects on the basis local affordable housing needs have been achieved.

2-5. Affordable Dwelling Units, Mandatory Provision

~~Permitted by Special Permit approved by the Planning Board as a Special Permit Granting Authority in all zoning districts except Municipal (M), Municipal Conservancy, (MC) and Industrial (I).~~

Special Permit requirements moved to Applicability Section below (VII,2.5.B.1)

A. Intent

The intent of this section is to ensure that residential developments include some affordable housing to meet the needs of Chatham's residents and workers. This section sets forth standards and conditions for affordable housing units required in developments. The standards are intended to be consistent with those recommended by the Cape Cod Commission for use by towns. It is also intended that ~~"affordable"~~ units required and approved under this ~~bylaw~~Section remain **affordable**.

Definitions

~~**Affordable**, used in reference to dwelling units means intended for rental or sale to low or moderate income people and in conformance with the requirements of this Bylaw in regard to price and income level of tenant (s).~~

Definitions moved to beginning of Section 2-1.

~~**Affordable Price**, used in reference to a dwelling unit, means a monthly rent or mortgage which does not exceed 30% of the gross monthly income of a household whose income is 70% of the median income for Barnstable County as reported by the United States Department of Housing and Urban Development (HUD).~~

~~**Income Eligible** means that the household income of a person or family does not~~

exceed 80% of the median income, adjusted for household size, for Barnstable County as reported by the United States Department of Housing and Urban Development (HUD).

~~Ten Percent~~, used in reference to the mandatory provision of affordable dwelling units, shall mean one tenth rounded to the nearest whole number. For example, any number below

B. Mandatory Provision of Affordable Dwelling Units

~~1.5 would be rounded to 1, while any number between 1.5 and 1.9 would be rounded to 2.~~

Applicability

Mandatory provisions of affordable dwelling units

~~This section of the Protective Bylaw applies to any residential subdivision or division of land resulting in 10 or more buildable lots or any residential multi-family development containing 10 or more dwelling units.~~

Permitted by Special Permit approved by the Planning Board as a Special Permit Granting Authority (SPGA) in all zoning districts except Municipal (M), Municipal Conservancy, (MC) and Industrial (I).

In any development that is subject to the regulations hereunder, ~~ten~~ twenty **percent** of all dwelling units, whether in new, rehabilitated or converted buildings, shall be **affordable** housing units. The calculation of the required number of affordable housing dwelling units to be provided under this Section shall be rounded to the nearest whole number. For example, any number below 1.5 would be rounded to 1, while any number between 1.5 and 1.9 would be rounded to 2. Nothing in this Section shall preclude a developer from providing more affordable housing units than required hereunder.

- a. **Division of Land** - This Section shall apply to any residential division of land into five (5) or more buildable lots, and shall require a Special Permit from the Planning Board acting as the Special Permit Granting Authority (SPGA). A Special Permit shall be required for land divisions under Section VI. D. - Open Space Residential Development as well as for "conventional" divisions allowed by G. L. c. 41 sec. 81-L and sec. 81-U, including those divisions of land that do not require subdivision approval (Approval Not Required plans).
- b. **Multiple Units** - This Section shall also apply to any residential multi-family development or redevelopment resulting in five (5) or more dwelling units, and shall require a Special Permit from the Planning Board. In cases where there are existing units, the calculation of the number of units is based upon the cumulative number of units proposed/approved, not the net number of units.

2. Segmentation

Developments shall not be segmented to avoid compliance with this Section. Divisions of land that would cumulatively result in an increase by five (5) or more residential lots or dwelling units above the number of existing on any

New heading proposed to improve navigation

Since the adoption of this "Inclusionary Zoning" Section in 2005, no affordable units have been created as a result. Based upon the limited availability of larger parcels for development, a higher "inclusionary" percentage (increased from 10% to 20%) and a lower unit threshold (reduced from 10 to 5) is proposed based upon size of recent developments.

Corresponding with the proposed percentage and threshold changes, proposed changes to the "Density Bonus" section are intended to provide a mechanism for developers to work within this bylaw and further Town goals of creating additional affordable housing.

Additionally, this Section has been restructured to differentiate more clearly between proposed lots and units

This new Section is proposed to more clearly establish when a project is potentially being "segmented" to avoid this regulation.

parcel or any contiguous parcels in common ownership twenty-four months earlier are subject to applicable portions and requirements of this Section. For purposes of this Section, a division of land shall mean any division of land subject to MGL Ch. 41, Sections 81K-81GG.

C. Methods of Providing Affordable Dwelling Units

1. On-Site Units

The **affordable** units may be constructed or rehabilitated on the locus of the development and sold or rented to an **income-eligible** household at an **affordable** price, or the Planning Board may, in its discretion, approve one or more of the following methods, or any combination thereof, for the provision of **affordable** units.

2. Off-Site Units

An equivalent number of **affordable** housing units may be constructed or rehabilitated on another site in the Town of Chatham, and sold or rented to an **income-eligible** household at an affordable price. All requirements that apply to on-site provision of **affordable** units shall apply to off-site **affordable** units. In addition, the location of the off-site units shall be approved by the Planning Board as an integral element of the development review and approval process.

3. Land Donation

An applicant may offer, and the Planning Board may accept, subject to approval of the Board of Selectmen, a donation of land in fee simple, on or off-site, that the Planning Board determines is suitable for the construction of an equivalent number of **affordable** housing units. Land donated for this purpose shall be subject to a restriction assuring its use for **affordable** housing. Prior to accepting land as satisfaction of the requirements of the **Bylaw Section**, the Planning Board may require the applicant to submit an appraisal or opinion of value to determine the suitability of the land for an equivalent number of **affordable** housing units.

4. Fee in Lieu of Units

The Planning Board may allow a development of non-rental dwelling units to make a cash payment to the Town through its Affordable Housing Trust Fund for each **affordable** unit required by these regulations. The cash payment per unit shall be equal to ~~three (3)~~ six and one-half (6.5) times the annual income of an **income-eligible** household of four.

Fee In Lieu Payment:

Proposed increase from 3 (\$172,050) to 6.5(\$372,775) times AMI (currently \$57,350) provides adequate funds for construction of a unit vs. purchasing one at an affordable price, which are rarely available on the market, as a result of Chatham's high median house price (\$597,500 – 2007) for all sales - condos and one-family dwellings.

This sentence is moved to new Applicability Sub-Section above and expanded upon to address the issue of "Segmentation"

~~Any development which creates or is phased to create 10 or more dwelling units within a 5-year period shall be subject to these requirements.~~

~~The **affordable** units provided under this section may be in addition to the number of units allowed on the property under the other provisions of this Bylaw, as a bonus. If the Planning Board approves a density bonus and the applicant proposes to pay an equivalent fee in lieu of units, the fee in lieu of **affordable** units shall not exceed six and one-half (6.5) times the annual income of an **income-eligible** household of four.~~

~~A guarantee that the requirements of this section will be met shall be provided to the Zoning Officer prior to the issuance of a building permit for any dwelling units or further dwelling units.~~

These three paragraphs have been moved to Sub-Section E. - Review Criteria below.

~~Specific requirements relative to the location, appearance, and phasing of construction of the **affordable** unit(s) may be imposed as a condition of approval of a special permit for a development subject to this section.~~

~~The Planning Board shall solicit comments and recommendations on the proposal from other Town regulatory agencies which have jurisdiction in the particular case, and prior to acting upon the application the Planning Board shall consider any comments and recommendations received from such agencies.~~

Proposed changes to this Section are intended to improve navigation by adding headings.

D. Conditions for approval of affordable dwelling units

Dwelling units required to be **affordable** or approved under this ~~Bylaw~~Section with the condition that they are *affordable* shall be subject to the requirements of this section.

1. * ~~_____~~ **Affordable Price**

Any dwelling unit required or approved under this ~~Bylaw~~Section as **affordable** shall meet the definition of an **affordable price** as set forth in this ~~Bylaw~~Section. Certification by the LPA that the price is an **affordable price** shall be provided to the Zoning Enforcement Officer.

2. **Income Eligibility Certification** ~~by the Chatham Housing Authority that the price is an **affordable price** shall be provided to the Zoning Enforcement Officer.~~

* ~~_____~~ At the time of the sale of any dwelling units approved or required under this ~~Bylaw~~Section as **affordable**, certification by the ~~Chatham Housing Authority~~LPA shall be provided to the **Zoning Enforcement Officer** that the purchaser is **income eligible** as defined in this ~~Bylaw~~Section.

3. * ~~_____~~ **Deed Restriction**

A **deed restriction** shall be placed upon the property limiting the rental rate or the resale price in perpetuity. The rental rate shall be restricted to meet the definition of **affordable price** under this ~~Bylaw~~Section. The formula for setting the resale price shall be as follows; at the time of the original purchase, a multiplier shall be determined by dividing the sales price by the ~~median income~~AMI for ~~the~~ Barnstable County MSA as provided by the ~~United States~~federal Department of Housing and Urban Development (HUD). At the time of sale of the unit, the multiplier times the ~~median income~~AMI at the time of the sale (HUD). At the time of sale of the unit, the multiplier times the ~~median income~~AMI at the time of the sale shall be the maximum sale price.

4. * ~~_____~~ **Resale Agreement**

If a unit is offered for sale, the purchaser and the Town shall sign an agreement setting forth the procedure for establishing a resale price to keep the unit **affordable** upon its sale and granting the Town the right of first refusal should the seller fail to enter into a bona fide purchase and sale agreement with an **income eligible** buyer within ninety (90) days of the date that the unit is originally offered for sale.

5. ~~*~~ **Rentals**

Any dwelling approved under this ~~Bylaw~~Section as an **affordable** rental unit shall be rented subject to a minimum 12-month lease.

6. ~~*~~ **Rental Certification**

For any dwelling unit required or approved as an **affordable** rental under this ~~Bylaw~~Section, certification by the ~~Chatham Housing Authority~~ LPA that the tenants occupying or purchasing the **affordable** units are **income eligible** and the rent charged them is affordable per the definitions in this ~~Bylaw~~Section must be submitted to the **Zoning Enforcement Officer** at the time of the signing of the lease and on an annual basis thereafter. Such certification is also required upon any change in tenants or rent charged. Dates of occupancy shall be stated in the certification.

7. ~~*~~ **Chatham Preference**

In the permitting and certification process, owners of **affordable** units created under this ~~Bylaw~~Section shall be encouraged to rent or sell the units to Chatham residents, workers, or people with ties to the community.

~~Density Bonus:~~

~~Density shall be limited as set forth in the provisions of the Protective Bylaw unless the Planning Board approves a density bonus for additional **affordable** dwelling units. A density bonus~~

This Section has been moved to the end and expanded. See Sub-Section G. below.

E. Review Criteria

1. **Additional Units**

The **affordable** units provided under this Section may be in addition to the number of units allowed on the property under the other provisions of this Section, as a bonus.

2. **Requirements Guarantee**

A guarantee that the requirements of this section will be met shall be provided to the **Zoning Enforcement Officer** prior to the issuance of a building permit for any dwelling units or further dwelling units. Specific requirements relative to the location, appearance, and phasing of construction of the **affordable** unit(s) may be imposed as a condition of approval of a Special Permit for a development subject to this section.

3. **Comments and Recommendations**

The Planning Board shall solicit comments and recommendations on the proposal from other Town regulatory agencies which have jurisdiction in the particular case, and prior to acting upon the application, shall consider any comments and recommendations received from such agencies.

This new Sub-Section provides the original review parameters for the Planning Board in a new format.

F. General Provisions

1. Rules and Regulations

The SPGAs shall be charged with administering this Section and shall promulgate Inclusionary Housing Rules and Regulations, including but not limited to submission requirements and procedures, application and review fees, minimum requirements for a marketing plan, and documentation required by the Town to qualify the **affordable** housing units for listing on the Chapter 40B Subsidized Housing Inventory.

2. Layout of Units

Affordable dwelling units shall be dispersed throughout the development and shall be generally comparable to market-rate units in terms of quality, room size, bedroom distribution, and external appearance.

3. Marketing Plan

The selection of qualified purchasers or qualified renters shall be carried out under a marketing plan approved by the Planning Board. The marketing plan must describe how the applicant will accommodate local preference requirements established by the Board of Selectmen, and federal or state fair housing laws.

4. Purchase of Units

Developers may sell **affordable** units to the Town of Chatham, the **Chatham Housing Authority**, or to any non-profit housing development organization that serves the Town of Chatham, in order that such entity may carry out the steps needed to market the **affordable** housing units and manage the choice of buyers.

5. Inventory Documentation

Developers shall be responsible for providing applications and other documentation required by the **Department of Housing and Community Development (DHCD)** to assure that the affordable housing units are or will be approved for listing on the Chapter 40B **Subsidized Housing Inventory**.

G. Density Bonus

A development subject to this Section shall comply with the density and dimensional requirements set forth in Section III unless the Planning Board approves a Density Bonus for additional affordable units. A Density Bonus not exceeding 80% of the total number of units permitted in the underlying zoning district may be granted by the Planning Board, provided the ~~applicant furnishes~~ Applicant constructs a greater number of affordable dwelling units than the mandatory ~~ten~~ twenty percent and the units are located within the proposed development.

The intent of this new Sub-Section is to provide additional provisions the help attain the broad affordable housing goals articulated at the beginning of Section 2.

Density Bonus:

Providing the SPGA with the ability to consider a Density Bonus where appropriate, is intended to provide a developer an opportunity to provide more affordable housing units in projects. The ultimate discretion on the appropriate level of bonus granted (if any) lies with the Planning Board.

Current section as written does not allow density greater than that allowed in the Protective Bylaw except for affordable units. New language would allow additional units both market and affordable at the Planning Board's discretion.

For example: A proposed five (5) unit development on a 100,000 sq. ft. lot in an R20 Zoning District, would require one (1) of the units to be affordable. The Planning Board would be able to grant a "density bonus" of up to four (4) units [five (5) permitted x 80%] with the mix of affordable to market units to be determined by the Board.

1. Review Criteria

Review criteria to guide the Planning Board in granting density bonuses have been added reinforce consideration of neighborhood context.

In addition to addressing the applicable Special Permit criteria in Section VIII.C.4., when considering a Density Bonus the Planning Board shall evaluate, as appropriate, the following:

- a. **Affordable** units shall be generally comparable in size and materials to dwelling units in the neighborhood or in the projection which it is located.
- b. To ensure livability, **affordable** units shall be generally comparable in size and materials to the other units in the overall project and consistent with local needs for affordable housing as
- c. Where appropriate exteriors of **affordable** units shall closely resemble the exteriors of other units in a project, and shall be reasonably distributed throughout the project.
- d. At least one (1) parking space for each affordable unit shall be provided.
- e. The **affordable** units shall, comply with the applicable provisions of Section VII. 2-2. for rental projects and Section VII. 2-3. for homeownership projects.

Section 3 – Antique Shop, Art Gallery or Gift Shop – Unchanged

4. Apartment, Incidental to a Commercial Use and Industrial Use

Permitted in the Industrial I Districts and allowed by special permit in the General Business (GB) Districts as follows:

- a. The use shall comply with the dimensional requirements stipulated in Appendix II for the commercial use provided:
 1. The area of any lot shall provide not less than ten thousand (10,000) square feet of buildable upland for each apartment. Except for **Affordable Apartment, Incidental to a Commercial Use and Industrial Use** where the area of any lot shall provide not less than five thousand (5,000) square feet of buildable upland for each apartment.
 2. In the GB District there shall be no more than four (4) apartments in one building. Except for **Affordable Apartment, Incidental to a Commercial Use and Industrial Use**.
 3. There shall be living quarters of not more than two (2) stories above finish grade and none below such level.
 4. In the Industrial District, there shall be no more than one (1) two-bedroom apartment per lot incidental to the commercial or industrial use. Except for **Affordable Apartment, Incidental to a Commercial Use and Industrial Use**.
 5. All **Affordable Apartment, Incidental to a Commercial Use and Industrial Use** shall be subject to the applicable requirements of Section VII 2-2.
- b. The residential use of the property shall be compatible with the nature and scale of the permitted commercial/industrial uses on the lot.

Proposed changes to Section 4 are intended to create opportunity for the production of affordable apartments incidental to commercial and industrial uses.

This revision specifies a 5,000 sq. ft. buildable upland requirement for affordable units.

Affordable units beyond four (4) market units may also be added (dependent upon the lots dimensional controls).

More than one (1) unit would be allowed when the balance of unit(s) is/are affordable

Affordable apartments would be created in accordance with the applicable criteria of Section 2

**Section 5 (Boarding or Rooming House, Tourist Home) through
Section 11.1 (Group Dwelling) - Unchanged**

12. Guest House

Permitted in the R60, R40, R20, R20A and SB Districts and by Special Permit in the GB Districts as follows:

- a. There shall be not more than one guest house on any one lot, such guest house may be separate from or a part of the principal dwelling, garage or barn. However, the floor area of a guest house shall not exceed fifty percent (50%) of the floor area of the principal dwelling.
- b. A guest house may be used by the owner or occupant of the principal dwelling or his or her guests, or it may be rented.
- c. For such guest house, the lot on which it is constructed shall have at least twenty thousand (20,000) square feet of buildable upland in addition to the minimum lot size required for the zoning district in which it is located. No guest house shall have more than two (2) bedrooms.
- d. When such guest unit is part of the principal dwelling and is occupied by a member of the immediate family occupying the principal dwelling, the Zoning Board of Appeals may grant a Special Permit to waive the ~~additional~~ land area requirements for a one (1) bedroom guest unit. Such a duly approved guest unit may be converted to an **Affordable Apartment Incidental to a Single Family Dwelling** in accordance with the applicable requirements of Section VII. 2-2.

This new provision would allow a homeowner with an "in-law" apartment created with a Special Permit to convert the unit to an affordable accessory apartment